

COMMISSIONERS APPROVAL

GRANDSTAFF *CG*
ROKOSCH *JER*

THOMPSON

CHILCOTT *gc*

DRISCOLL *LD*

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner Carlotta Grandstaff, Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner Greg Chilcott and Commissioner Kathleen Driscoll.

Date.....January 8, 2008

Minutes: Beth Perkins

► The Board met in regard to the Interim Juvenile Detention Director position. Present were Human Resources Director Skip Rosenthal and Cal Robinson of the Detention Center.

Skip stated Lori Rodrick submitted a letter of resignation for the position of Juvenile Detention Director. She will remain working as a Detention Officer. Skip recommended Cal Robinson be appointed as acting Juvenile Detention Director. Commissioner Thompson asked Cal if he has any plans for change should he obtain the position. Cal replied he has no plans for any major changes. The Board discussed salary options with Cal.

Commissioner Chilcott made a motion to appoint Cal Robinson to Interim Juvenile Detention Director with starting salary at \$17.12 per hour. Commissioner Rokosch seconded the motion, all voted 'aye'.

Commissioner Rokosch made a motion for the position to be non-exempt. Commissioner Chilcott seconded the motion, all voted 'aye'.

► The Board met for a public meeting for Canyon Breeze Major subdivision. Present were Civil Counsel Alex Beal, Planner Tristan Riddell, Representative Nathan Lucke and Owner Robert Kwapy.

Commissioner Grandstaff called the meeting to order. Civil Counsel Alex Beal made some comments regarding the process of the subdivision review. He stated when the

meeting ends, the discretion ends with the final plat. Commissioner Rokosch stated the Board needs to keep in mind the timeline for final decision.

Commissioner Grandstaff requested any conflicts of interest, hearing none. She then requested the Planning Staff Report be presented.

Tristan presented the Staff Report as follows:

**CANYON BREEZE (CANYON BREEZE LLC)
FOURTEEN-LOT MAJOR SUBDIVISION**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Tristan Riddell

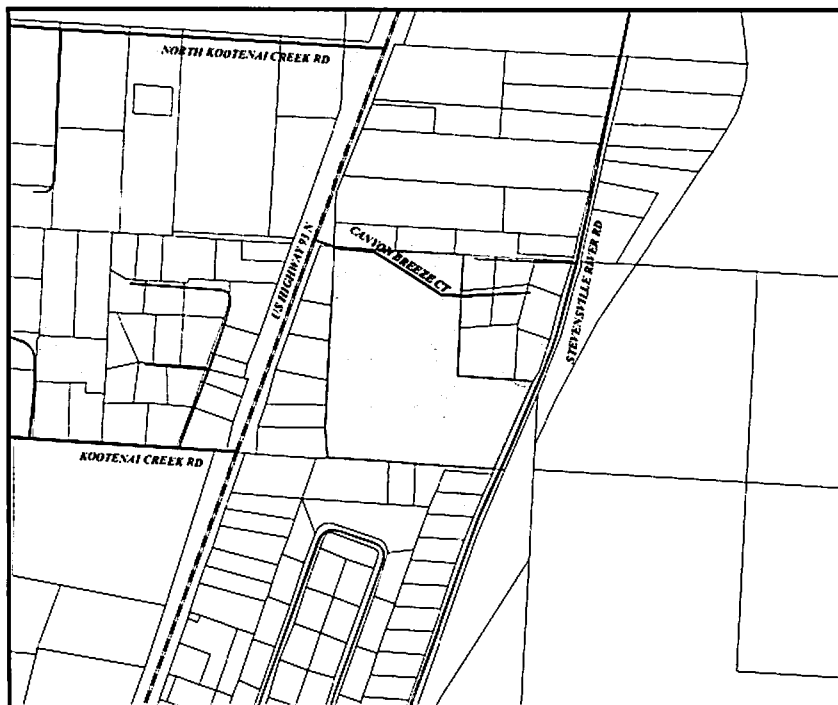
**REVIEWED/
APPROVED BY:** Renee Lemon

**PUBLIC HEARINGS/
MEETINGS:** Planning Board Public Meeting 7:00 p.m.
January 2, 2008
BCC Public Hearing: 9:00 a.m. January 8, 2008
Deadline for BCC action (60 working days): February 13, 2008

SUBDIVIDER: Canyon Breeze, LLC/Robert Kwapy
PO Box 370
Stevensville, MT 59870

REPRESENTATIVE: Territorial-Landworks
Nathan Lucke
PO Box 3851
Missoula, MT 59806

LOCATION OF REQUEST: The property is located west of Stevensville off Canyon Breeze Court and US Highway 93. (See Map 1)



Map 1: Location Map
 (Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
 OF PROPERTY:**

A parcel, located in the SW ¼ of Section 15, T9N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION
 INFORMATION:**

The subdivision application was determined complete on November 15, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-8 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

LEGAL NOTIFICATION:

A legal advertisement was published in the *Ravalli Republic* on Monday, December 17, 2007. Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked December 13, 2007. No public comments have been received to date.

**DEVELOPMENT
 PATTERN:**

Subject property	Vacant
North	Rural Residential/Commercial

South	Rural
Residential/Commercial/Vacant	Rural
East	Rural Residential/Bitterroot River
West	Commercial/Vacant Rural/US
Highway 93	

INTRODUCTION

The Canyon Breeze Major subdivision is a fourteen-lot subdivision proposed on 28.75 acres. The proposal is for fourteen (14) residential lots. Lots will be served by individual wells and septic systems. No variances were requested with this proposal.

The Planning Department has been working with the Consulting Engineer in regards to the proposed emergency-only access and the possibility of creating a through road.

Staff recommends conditional approval of the subdivision proposal.

RAVALLI COUNTY PLANNING BOARD

JANUARY 2, 2008

CANYON BREEZE FOURTEEN-LOT MAJOR SUBDIVISION

RECOMMENDED MOTIONS

1. That the Canyon Breeze Major Subdivision be ***approved***, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Section 3-2-8(b)(v), RCSR, Effects on Agriculture*)

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the Stevensville River Road frontage of this subdivision, excepting the approach to Canyon Breeze Lane. All lots within this subdivision shall access off the internal subdivision roads. There are also no-ingress/egress zones located along the private driveway leading to Lot 8. Lots 7 and 9 shall access directly off Canyon Breeze Lane. This limitation of access may be lifted or amended only with the approval of the Board of

Ravalli County Commissioners. (*Section 3-2-8(b)(v), Effects on Local Services and Public Health and Safety*)

Notification of Road Maintenance Agreement. Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal subdivision roads and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for these roads was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. (*Section 3-2-8(b)(v), Effects on Local Services*)

Notification of Irrigation Facilities and Easement. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Downstream water right holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. (*Section 3-2-8(b), Prerequisites to Approval and Section 3-2-8(b)(v), Effects on Agricultural Water User Facilities*)

Notification of Severe Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as severe for roads and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils are included as exhibits to this document. (The subdivider shall include the exhibits as attachments) (*Effects on Public Health and Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Living with Wildlife. (See Exhibit A-1 for required provisions.) (*Section 3-2-8(b)(v), Effects on Agriculture and Wildlife & Wildlife Habitat*)

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light

upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (Section 3-2-8(b)(v), *Effects on Natural Environment and Public Health and Safety*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their structures tested for radon. Contact the Ravalli County Environmental Health Department for further information. (Section 3-2-8(b)(v), *Effects on Public Health & Safety*)

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (Section 3-2-8(b)(v), *Effects on Agriculture and Natural Environment*)

Posting of County-Issued Addresses for Lots within this Subdivision. The Stevensville Rural Fire District has adopted the Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the accessway leading to each lot as soon as construction on the structure begins. (Section 3-2-8(b)(v), *Effects on Local Services and Public Health & Safety*)

Access Requirements for Lots within this Subdivision. The Stevensville Rural Fire District has adopted the Fire Protection Standards. All accesses over 150' in length must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Stevensville Rural Fire District for further information. (Section 3-2-8(b)(v), *Effects on Local Services and Public Health & Safety*)

Building Standards. The All Valley Fire Council recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. It is recommended that any commercial buildings be constructed to meet state building code requirements. (Section 3-2-8(b)(v), *Effects on Local Services and Public Health & Safety*)

Wood Stoves. The County recommends that home owners install EPA-certified wood stoves to reduce air pollution. It is recommended that wood burning stoves not be used as the primary heat source. More information is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Credit for the cost of purchasing and

installing a low emission wood or biomass combustion device such as a pellet or wood stove. *(Section 3-2-8(b)(v), Effects on Natural Environment)*

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Section 3-2-8(b)(v), Effects on all six criteria)*

3. The subdivider shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Section 3-2-8(b)(v), Effects on Local Services)*
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the subdivider shall provide a letter from the Stevensville Rural Fire District stating that the subdivider have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdivider may provide evidence that a \$500-per-lot contribution has been made to the Stevensville Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*
6. The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Stevensville Rural Fire Department, has adopted Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Stevensville Rural Fire Department for further information". *(Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)*
7. The final plat shall show a no-ingress/egress zone along the Stevensville River Road frontage of the subdivision, excepting the approved approach for Canyon Breeze Lane, as approved by the Ravalli County Road & Bridge Department. *(Section 3-2-8(b)(v), Effects on Local Services and Public Health and Safety)*

8. Stop signs and road name signs shall be installed at the intersections of all internal roads prior to final plat approval. (*Section 3-2-8(b)(v), Effects on Local Services and Public Health and Safety*)
9. The subdivider shall submit a letter or receipt from the Stevensville School District stating that they have received an amount per lot (to be recommended by the Board of County Commissioners in consultation with the subdivider and the School District) prior to final plat. (*Section 3-2-8(b)(v), Effects on Local Services*)
10. The subdivider shall submit an (amount)-per-unit contribution to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services prior to final plat approval. (*Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety*)
11. The following statement shall be shown on the face of the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (*Section 3-2-8(b)(v), Effects on the Natural Environment*)
12. The subdivider shall provide evidence indicating that all surface water rights associated with the subject property have been severed from the land prior to final plat approval. (*Section 3-2-8(a), Prerequisites to Approval and Section 3-2-8(b)(v), Effects on Agricultural Water User Facilities*)
13. A 15-foot wide irrigation easement providing water from the west, north along the western boundary of Lot 4 then east along the shared boundaries of Lots 3 and 4 and Lots 11 and 12, to Lot 2 of the East Side Subdivision shall be shown on the final plat. In addition the subdivider shall install a culvert under Canyon Breeze Drive. (*Section 3-2-8(a), Prerequisites to Approval and Section 3-2-8(b)(v), Effects on Agricultural Water User Facilities*)
14. The subdivider shall provide for a 30-foot wide private driveway access and utility easement along the western boundary of Lot 9 to serve Lot 8. No-ingress/egress strips shall be located along each side of the easement so that only Lot 8 has access to the driveway. (*Effects on Local Services*)
15. The subdivider shall submit an updated RMA for Canyon Breeze Court that includes the residents of both the Canyon Breeze Subdivision and the East End, Lot 1, AP. (*Effects on Local Services*)
16. The applicants shall provide evidence that plans for a Collection Box Unit (CBU), including location of the box and specifications, have been approved by the local post office prior to final plat approval. (*Effects on Local Services*)

17. The subdivider shall work with the school district to determine an appropriate location for a safe pick-up/drop off zone for school children, if applicable.
(Effects on Local Services)

FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)

The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.

1. A statement from the project surveyor or engineer prior to final plat approval outlining how each final plat requirement or condition of approval has been satisfied.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) The final plat shall conform to the preliminary plat decision. The features listed in RCSR Section 3-4-4(a)(ii) are required on the Final Plat. Following are specific features related to this subdivision:
 - a) Existing and proposed utility easements, as shown on the preliminary plat, shall be shown on the final plat.
 - b) The existing 15-foot wide irrigation easement on the western boundaries of Lots 4 and 5 shall be shown on the final plat, as shown on the preliminary plat.
 - c) A 15-foot wide irrigation easement providing water from the west, north along the western boundary of Lot 4 then east along the shared boundaries of Lots 3 and 4 and Lots 11 and 12, to Lot 2 of the East Side Subdivision shall be shown on the final plat. In addition the subdivider shall install a culvert under Canyon Breeze Drive. No ingress/egress zone along the Stevensville River Road, excepting the approved approach to Canyon Breeze Lane.
 - d) No ingress/egress zones along each side of a private, 30-foot wide driveway easement leading to Lot 8.
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
4. Any variance decisions shall be submitted with the final plat submittal. (None have been requested at this time)
5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
6. The final plat review fee shall be submitted with the final plat submittal.

7. Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
9. The DEQ Certificate of Subdivision Approval shall be submitted with the final plat submittal.
10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal, if applicable.
11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
12. A copy of the appraisal report, per Section 6-1-7, dated no less than six (6) months from the date of the submittal, for calculating the cash-in-lieu of parkland dedication and a receipt from the County Treasurer's Office for the payment of cash-in-lieu of parkland dedication.
13. A final approach permit from the Ravalli County Road and Bridge Department for the Canyon Breeze Lane connection to Stevensville River Road shall be submitted with the final submittal.
14. Evidence of Ravalli County-approved road name petition(s) for each new road.
15. Final Road Plans and Grading and Storm Water Drainage Plan.
16. Road certification(s).
17. Utility availability certification(s) from NorthWestern Energy and Qwest Communications shall be submitted with the final plat submittal.
18. A Road Maintenance Agreement for Canyon Breeze Court, Canyon Breeze Drive, and Canyon Breeze Lane, signed and notarized.
19. Written and notarized documentation indicating that the water rights will be removed from the property. This requirement can be met through Condition 12, which requires that the subdivider actually sever the water rights prior to final plat approval, and provide evidence to that effect.

20. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
21. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plat submittal.
22. A copy of the letter sent to the Stevensville School District stating the subdivider has made or is not willing to make a voluntary contribution (to be determined) to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
23. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider, Professional Engineer, or contractor, as may be appropriate and required. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.) (Section 3-4-4(a)) The following improvements have been approved through this proposal:
 - a. Specific infrastructure improvements required for this subdivision are the installation of stop signs and road name signs at the intersection of all accesses with Stevensville Cutoff Road, and the construction of the internal road system as shown on the preliminary plat and as preliminarily approved by the Road and Bridge Department.

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. Existing utilities are located along the Canyon Breeze Court and Stevensville River Road frontages of the subdivision. (Canyon Breeze Application)
2. The proposed 60-foot wide public road and utility easements for Canyon Breeze Drive and Canyon Breeze Lane will provide utilities to Lots 2 through 7 and Lots 9 through 13. Lot 8 will receive utility service from the

existing public road and utility easement located along Stevensville River Road. Lots 1 and 14 will receive utility service from the existing 60-foot public road and utility easement associated with Canyon Breeze Court. (Canyon Breeze Application)

3. *Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)*

Conclusion of Law

The proposed subdivision application provides for utility easements.

- B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.**

Findings of Fact

1. The subject property is accessed by US Highway 93, Canyon Breeze Court, Stevensville Cutoff Road, Stevensville River Road, and the proposed internal road system. (Canyon Breeze Subdivision Application)
2. US Highway 93 and Stevensville Cutoff Road are State roads. (Canyon Breeze Subdivision Application)
3. Stevensville River Road is a County-maintained road. (Exhibit A, RCSR)
4. Canyon Breeze Court is a privately-maintained road. A 60-foot wide public access and utility easement agreement has been filed for Canyon Breeze Court. (Canyon Breeze Subdivision Application and Document # 586164)
5. The subdivider is proposing to construct the internal road system to meet County standards. The Ravalli County Road and Bridge Department has issued preliminary approval of the road plans. (Canyon Breeze Subdivision Application)
6. The subdivider is proposing 60-foot wide public road and utility easements for the internal subdivision roads. (Canyon Breeze Subdivision Application)
7. *To ensure legal and physical access to the subdivision, the following requirements shall be met:*
 - a. *Submittal of approved Road and Driveway approach and encroachment permits from RCRBD and MDOT. (Requirement 13)*
 - b. *The subdivider shall submit an updated RMA for Canyon Breeze Court that includes the residents of both, the Canyon Breeze Subdivision and the East End, Lot 1, AP. A RMA for Canyon Breeze Drive and Canyon Breeze Lane shall be submitted prior to final plat approval. Notifications of the RMAs shall be included in the Notifications Document. (Requirement 18 and Conditions 1 and 15)*
 - c. *Final approval from the Ravalli County Road and Bridge Department that the internal road network was constructed to meet County standards is required to be submitted prior to final plat approval. This packet shall include final road plans and grading and storm water drainage plan, and a final letter of approval from the Ravalli County Road and Bridge Department. (Requirements 15 and 16)*

Conclusion of Law

Legal and physical access will be provided by US Highway 93, Canyon Breeze Court, Stevensville Cutoff Road, Stevensville River Road, and the internal road network.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

Findings of Fact

1. To mitigate impacts on public health and safety, the subdivider is required to install stop signs and road name signs at the intersections of all internal roads before final plat approval. (Condition 8)
2. The subdivider is proposing to construct the internal road system as proposed in the road plans that have been preliminarily approved by the Ravalli County Road and Bridge Department. (Canyon Breeze Subdivision Application)
3. *The subdivider is required to submit evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the subdivider prior to final plat approval. (Requirement 23)*

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Finding of Fact

1. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the subdivider is required to:
 - (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
 - (iii) reserve and sever all surface water rights from the land.

2. The average lot size for this proposal is approximately 2.04 acres (Canyon Breeze Subdivision Application)
3. The subdivider is proposing to reserve and sever all surface water rights from the land. (Canyon Breeze Application)
4. *To ensure that the water rights have been severed from the land, the subdivider shall provide evidence that this has occurred prior to final plat approval. (Condition 12)*

Conclusion of Law

Upon providing proof that the water rights have been severed from the land, this requirement will be met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Finding of Fact

1. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii) (the proposal does not meet the criteria in this subsection), the subdivider is required to establish ditch easements in the subdivision that:
 - (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
2. There is an existing irrigation ditch traversing the southwestern portion of the subdivision. The ditch is labeled as an "Existing Irrigation Ditch Within 15' Easement" on the preliminary plat. (Canyon Breeze Subdivision Application)
3. The owners of Lot 2 of the East Side Subdivision, which is immediately north of proposed Lot 10, notified the Planning Department that they have water rights from Kootenai Creek. Currently, there is no ditch infrastructure across the proposed subdivision carrying water to Lot 2 of the East Side Subdivision. The owners of Lot 2 are concerned about their ability to physically get the water. No evidence has been provided that the owners of Lot 2 no longer have beneficial use of the water rights because of the lapse in use. (Exhibit A-8)
4. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and condition shall be met prior to final plat approval:*

- *The 15-foot wide irrigation easement is required to be shown on the final plat, as proposed on the preliminary plat. (Final Plat Requirement 2)*
- *A 15-foot wide irrigation easement providing water from the west to Lot 2 of the East Side Subdivision shall be shown on the final plat or alternatively, the subdivider shall submit evidence that Lot 2 does not have water rights prior to final plat approval. (Condition 14 and Final Plat Requirement 2)*
- *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner(s) shall be included in the notifications document. (Condition 1)*

Conclusion of Law

With the requirements and conditions of final plat approval, this prerequisite will be met.

F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Findings of Fact

1. All lots within the subdivision are proposed for residential use. (Canyon Breeze Subdivision Application)
2. The subdivider has proposed cash-in-lieu of parkland dedication. (Canyon Breeze Subdivision Application)
3. During the January 2, 2008 Planning Board meeting, Bob Cron, Park Board Representative, stated that the Park Board would concur with the subdividers preference to pay cash-in-lieu of parkland.
4. *Prior to final plat approval, the subdivider is required to submit a copy of the appraisal report, per Section 6-1-7, dated no less than six (6) months from the date of the submittal, for calculating the cash-in-lieu of parkland dedication. The BCC shall determine whether or not to accept the report or request another appraisal. Once the BCC has approved an appraisal, the subdivider shall pay the cash-in-lieu based on the approved appraisal to the County Treasurer's Office and provide a receipt with the final plat submittal. (Requirement 12)*

Conclusion of Law

With the acceptance of a cash-in-lieu payment, the parkland requirement will be met.

G. Overall Conclusion on Prerequisite Requirements

With the conditions and requirements of final plat approval, there is credible evidence that the subdivision application meets the prerequisite requirements.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The subdivision design as indicated on the preliminary plat meets the design standards in Chapter 5 of the RCSR. (Canyon Breeze Subdivision File)
2. This development proposal has followed the necessary application procedures and has been reviewed in compliance with Chapter 3 of the RCSR. (Canyon Breeze Subdivision File)

Conclusions of Law

1. The preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The requirements for the application and review of this proposed subdivision have been met.

B. Applicable zoning regulations.

Findings of Fact

1. The subject property is under the jurisdiction of the interim zoning regulation limiting subdivisions to a density of one dwelling per two acres (recorded as Resolution 2038). The application complies with Resolution 2038.
2. The property is not within one of the voluntary zoning districts in Ravalli County. (Canyon Breeze Subdivision Application)

Conclusion of Law

This proposal complies with existing zoning regulations.

C. Existing covenants and/or deed restrictions.

Findings of Fact

There are no existing covenants on the property. (Canyon Breeze Subdivision Application)

Conclusion of Law

There are no applicable covenants or deed restrictions.

D. Other applicable regulations.

Findings of Fact

1. Following are applicable regulations:
 - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA

- Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. Prior to final plat approval, the applicants are required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

Conclusion of Law

With the requirements of final plat approval, the application will meet all of the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed major subdivision on 28.75 acres will result in fourteen lots that range in size from 2.00 acres to 2.27 acres. The property is located approximately 2 miles northwest of the Town of Stevensville off U.S. Highway 93. (Canyon Breeze Subdivision Application)
2. The subject property is located in an area with a mix of commercial, residential, and agricultural uses. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services; 2005 Aerial Photography created by the National Agricultural Imagery Program; and the Canyon Breeze Subdivision Application)
3. There is no prime farmland or farmland of statewide importance on the property. (Canyon Breeze Subdivision Application and Web Soil Survey, U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS))
4. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated Common Tansy and Canadian Thistle were present on the property. The subdivider has proposed a provision in the covenants that the owners of each lot control noxious weeds. (Canyon Breeze Subdivision Application)
5. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)

6. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
- *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*
 - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agriculture.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. The application states that there are three water rights associated with the property. The subdivider states that the water rights will be severed from the land prior to final plat approval. (Canyon Breeze Subdivision Application)
2. There is a 15-foot wide irrigation easement shown on the ditch that borders proposed Lots 4 and 5. There are downstream users. (Canyon Breeze Subdivision Application)
3. The owners of Lot 2 of the East Side Subdivision, which is immediately north of proposed Lot 10, notified the Planning Department that they have water rights from Kootenai Creek. Currently, there is no ditch infrastructure across the proposed subdivision carrying water to Lot 2 of the East Side Subdivision. The owners of Lot 2 stated that they are concerned about their ability to physically get the water. No evidence has been provided that the owners of Lot 2 have lost beneficial use of the water rights because of a lapse in use. (Exhibit A-8)
4. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agricultural water user facilities:*
 - *Prior to final plat approval, the subdivider shall provide evidence that all surface water rights have been severed from the land. (Condition 12)*
 - *The notifications document filed with the final plat shall include a notification of the irrigation ditch and easement on Lots 4 and 5. (Condition 1)*
 - *The 15-foot wide irrigation easement shall be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*
 - *A 15-foot wide irrigation easement providing water from the west, north along the western boundary of Lot 4 then east along the shared boundaries of Lots 3 and 4 and Lots 11 and 12, to Lot 2 of the East Side Subdivision shall be shown on the final plat. In addition the subdivider*

shall install a culvert under Canyon Breeze Drive. (*Condition 13 and Final Plat Requirement 2*)

Conclusion of Law

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agricultural water user facilities.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Fire District

1. The subdivision is located within the jurisdiction of the Stevensville Rural Fire Department. (Canyon Breeze Subdivision Application)
2. The All Valley Fire Council, which includes the Stevensville Rural Fire Department, has adopted Fire Protection Standards (outlined in document from the Hamilton Rural Fire Department) that address access, posting of addresses, and water supply requirements. The Fire Council also recommends that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. (Exhibit A-1)
3. In a letter dated June 25, 2007, Bill Perrin, Chief of the Stevensville Rural Fire Department, stated that the fire district requests that a 20-foot wide access-way be provided off of Stevensville River Road between Lots 9 and 10 in addition to the \$500 contribution typically asked for by the department. (Exhibit A-2)
4. The applicants are proposing to construct a County standard road with a cul-de-sac to the edge of Stevensville River Road. They are proposing that the connection to Stevensville River Road be an emergency access instead of a through-road. (Canyon Breeze Subdivision Application)
5. *The following conditions will mitigate impacts of the subdivision on the Stevensville Rural Fire Department:*
 - *Provisions shall be included in the covenants requiring that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
 - *The covenants shall include a recommendation that houses within this subdivision be built to International Residential Building Code (IRBC) building standards. (Condition 2)*
 - *Prior to final plat approval, the subdivider shall provide a letter from the Stevensville Rural Fire Department stating that the subdivider have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for the additional lot. Alternatively, the subdivider may provide evidence that \$500 has been contributed to the Stevensville Rural Fire Department with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)*
 - *The following statement shall be shown on the final plat: "The All Valley Fire Council, which includes the Stevensville Rural Fire Department, has adopted Fire Protection Standards. All accesses, including driveways to*

residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Stevensville Rural Fire Department for further information". (Condition 6)

- *The subdivider shall construct the Canyon Breeze Lane connection to Stevensville River Road to be a through-road. (See findings under Roads below.) (Condition 15)*

School District

6. The proposed subdivision is located within the Stevensville School District. (Canyon Breeze Subdivision Application)
7. It is estimated that 7 school-aged child will be added to the Stevensville School District, assuming an average of 0.5 children per household. (Census 2000)
8. In a letter dated December 10, 2007, Kent Kultgen, Superintendent of the Stevensville School District, asked that the subdivider consider the inclusion of a safe pick-up/drop off zone for school bus children and that the district has yet to complete an impact fee study. (Exhibit A-3)
9. The cost per pupil for one year in the Stevensville School District, excluding capital costs, is \$8,020. Taxes from new residents are not immediately available to the school districts. (Exhibit A-4)
10. *The following conditions shall be met to mitigate impacts on the School District:*
 - *To mitigate impacts on local services, the subdivider shall work with the school district to determine an appropriate location for a safe pick-up/drop off zone for school children, if applicable. (Condition 17)*
 - *Staff recommends that the subdivider negotiate a contribution with the BCC, in consultation with the Stevensville School District, if possible, to mitigate potential impacts of additional students on the School District. (Condition 9 and Final Plat Requirement 23)*

Water and Wastewater Districts

11. Individual wells and wastewater treatment systems are proposed to serve the lots. The property is not near any municipal water or wastewater systems. (Canyon Breeze Subdivision Application)

Law Enforcement and County Emergency Services (Sheriff, E-911, DES)

12. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Canyon Breeze Subdivision Application)
13. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on August 2, 2007 and November 27, 2007, but no comments have been received from the Sheriff's Office. (Canyon Breeze Subdivision File)
14. The average number of people per household in Ravalli County is 2.5. (Census 2000)
15. The subdivider has not proposed mitigation for the impacts that an additional 32.5 people will have on Public Safety Services (Sheriff, E-911, and DES)

prior to any taxes being collected from those additional residents. (Canyon Breeze Subdivision Application)

16. *To mitigate impacts on Ravalli County Public Safety Services, Staff recommends the subdivider negotiate a contribution with the BCC, to be deposited into an account for Public Safety Services (Sheriff, E-911, DES) prior to final plat approval. (Condition 10)*

Ambulance Services

17. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Dept. Marcus Daly was contacted on August 2, 2007 and November 27, 2007, but no comments have been received to date. (Canyon Breeze Subdivision File)
18. *To mitigate impacts on emergency services, the subdivider shall provide evidence with the final plat submittal that they have applied for a County-issued address for each lot within the subdivision. (Condition 4)*

Solid Waste Services

19. Bitterroot Disposal provides solid waste service to this site.
20. Notification letters were sent to Bitterroot Disposal requesting comments on August 2, 2007 and November 27, 2007, but no comments have been received. (Canyon Breeze Subdivision File)

Utilities

21. The proposed subdivision will be served by NorthWestern Energy and Qwest Communications. (Canyon Breeze Subdivision Application)
22. Notification letters were sent to both utility companies requesting comments on August 2, 2007 and November 27, 2007, but no comments have been received by either company. (Canyon Breeze Subdivision File)
23. *The following requirements will mitigate impacts of the subdivision on local utilities:*
 - *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
 - *The subdivider shall submit utility availability certifications from NorthWestern Energy and Qwest Communications prior to final plat approval. (Final Plat Requirement 17)*

Roads

24. It is estimated that this subdivision will generate an additional 104 trips per day. (Canyon Breeze Subdivision Application)
25. The subdivider is proposing to access Lots 1 through 7 and Lots 9 through 14 off the proposed internal subdivision roads, Canyon Breeze Court, and US Highway 93. Access to Lot 8 is proposed via an individual driveway off Stevensville River Road. (Canyon Breeze Subdivision Application)
26. Canyon Breeze Court is a privately-maintained road that was recently constructed to meet County standards by Mr. Kwapy for the East End Lot 1 minor subdivision, which received final plat approval in 2007. (Canyon Breeze Subdivision Application)
27. There is an existing RMA for Canyon Breeze Court filed with the East End, Lot 1, AP minor subdivision. The existing RMA will be revised to include the Lots within the Canyon Breeze proposal.
28. The subdivider is proposing to construct the internal roads (Canyon Breeze Drive and Canyon Breeze Lane) to meet County standards. The Road Department has granted preliminary approval to the design. (Canyon Breeze Subdivision Application)

29. Stevensville River Road is a County-maintained road. (RCSR)
30. The subdivider has submitted an approved approach permit for Lot 8 to access directly from Stevensville River Road from the Road and Bridge Department. This approach has been installed. (Canyon Breeze Subdivision Application)
31. In accordance with Section III (c) of the Ravalli County Road and Bridge Department's Access Encroachment Policy, the subdivider is allowed only one approach onto Stevensville River Road (minor local road). In a conversation on December 26, 2007, Road Supervisor David Ohnstad stated that in accordance with the Encroachment Policy, the RCRBD would not issue another approach onto Stevensville River Road.
32. The Stevensville Rural Fire District is requesting that the subdivider provide for a second access to the subdivision off Stevensville River Road between Lots 9 and 10. (Exhibit A-2)
33. In response to the Fire District's request, the subdivider is proposing an emergency-only access off Stevensville River Road. Canyon Breeze Lane, which provides the emergency-only connection to Stevensville River Road, will be constructed to meet County standards and has received preliminary approval from the Road Department. (Canyon Breeze Subdivision Application)
34. The application does not provide any findings on why the Canyon Breeze Lane connection to Stevensville River Road should be an emergency-only access instead of a through-road. (Canyon Breeze Subdivision Application)
35. In order to meet the request of the Stevensville Rural Fire Department and the requirements of the Access Encroachment Policy, the subdivider will need to abandon the approach to Lot 8 and re-apply for an approach to connect to the proposed emergency-only access onto Canyon Breeze Lane.
36. *To mitigate impacts on the road network and to provide for efficient traffic circulation, the following conditions and requirements shall be met:*
 - *The subdivider shall submit an updated RMA for Canyon Breeze Court that includes the residents of both the Canyon Breeze Subdivision and the East End, Lot 1, AP. A RMA for Canyon Breeze Drive and Canyon Breeze Lane shall be submitted prior to final plat approval. Notifications of the RMAs shall be included in the Notifications Document. (Requirement 18 and Conditions 1 and 15)*
 - *The subdivider shall provide for a 30-foot wide private driveway access and utility easement along the western boundary of Lot 9 to serve Lot 8. No-ingress/egress zones shall be located along each side of the easement so that only Lot 8 has access to the driveway. Notification of the no-ingress/egress zones shall be included in the Notifications Document. (Conditions 1 and 14)*
 - *A final approach permit from the Ravalli County Road and Bridge Department for the Canyon Breeze Lane connection to Stevensville River Road shall be submitted with the final submittal. (Final Plat Requirement 13)*
 - *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Condition 3)*
 - *The final plat shall show no-ingress/egress zones along the Stevensville River Road frontage of the subdivision, excluding the approved approach to for Canyon Breeze Lane. A notification of the no-ingress/egress zones shall be included in the notifications document. (Final Plat Requirement 2 and Conditions 1 and 7)*

- *Prior to final plat approval, the subdivider shall provide evidence from the Road and Bridge Department that the internal roads have been built to required specifications, as approved in the preliminary road design. (Final Plat Requirements 15, 16 and 23)*
- *Prior to final plat approval, the subdivider shall submit a General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ. (Requirement 10)*
- *Add stop signs and road name signs. (Condition 8)*
- *Add road name petition requirement (Requirement 14)*

Postal Service

37. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS (Exhibit A-5).
38. *To mitigate impacts on local services, the subdivider shall provide evidence that plans for a Collection Box Unit (CBU), including location of the box and specifications have been approved by the local post office prior to final plat approval. (Condition 16)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on local services.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

Air Quality

1. The Montana Department of Environmental Quality (DEQ) determined that Ravalli County has failed the National Ambient Air Quality Standards for particulate matter. Sources of particulate from this subdivision could be vehicles, and/or wood-burning stoves. (Exhibit A-6)
2. *To mitigate impacts on air quality, a recommendation for EPA-certified wood stoves shall be included in the covenants. (Condition 2)*

Ground Water Quality

3. The applicants are proposing individual wells and wastewater facilities. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Canyon Breeze Subdivision Application)
4. *The subdivider is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*

Surface Water Features

5. There are no streams, riparian areas or wetlands on or adjacent to the property.

6. The subdivision is located adjacent to the Bitterroot River. The entire property falls outside the 100-year floodplain and is separated from the river by the Stevensville River Road. A floodplain analysis was not required. (Canyon Breeze Subdivision Application, Site Visit, Ravalli County GIS data)

Light Pollution

7. The addition of homes in an area that currently has lower density development has the potential to create light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark-Sky Association, www.darksky.org)
8. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*

Vegetation

9. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated Common Tansy and Canadian Thistle were present on the property. The subdivider has proposed a provision in the covenants that the owners of each lot control noxious weeds. (Canyon Breeze Subdivision Application)
10. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
11. The Montana Natural Heritage Program found that there were no plant species of concern within the same sections as the subject property (Canyon Breeze Subdivision Application).
12. *To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

Archaeological Resources

13. There are no known sites of historical significance on the property. (Canyon Breeze Subdivision Application)
14. *To mitigate possible impacts on any potential sensitive historical, cultural, archaeological, paleontological, and/or scenic sites, the following statement shall be on the final plat: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the developer will contact the State Historic Preservation Office to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 11)*

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

The property is not located within big-game winter range. (FWP)

FWP recommended living with wildlife covenants for the property. (Exhibit A-7)

According to the Montana Natural Heritage Program (MNHP) in May of 2007, the Canada Lynx, Western Spotted Skunk, Olive-sided Flycatcher, Bobolink, and Lewis's Woodpecker were identified as species of concern as they have been known to exist in the same section as the proposed subdivision. (Canyon Breeze Subdivision Application)

The subdivider submitted a sensitive species report prepared by an ecological consultant named Joe C. Elliot Ph.D. Mr. Elliot visited the site on May 25, 2007 and found the habitat to be non-suitable for all species identified by MNHP. (Canyon Breeze Subdivision Application)

To mitigate impacts on wildlife, the following conditions shall be met:

- *The covenants shall include a living with wildlife section. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

Traffic Safety

1. Access is proposed off Canyon Breeze Court from US Highway 93 and Stevensville River Road from U.S. Highway 93 and Stevensville Cutoff Road. (Canyon Breeze Subdivision Application)
2. *The requirements and conditions listed under Roads in Criterion 3 will mitigate the impacts of the subdivision on traffic safety.*

Emergency Vehicle Access and Response Time

3. The proposed subdivision will be served by the Stevensville Rural Fire Department, the Ravalli County Sheriff's Office, Ravalli County E-911, the Ravalli County Department of Emergency Services, and Marcus Daly Memorial Hospital EMS Department. (Canyon Breeze Subdivision Application)
4. This proposal will add approximately 32.5 people to Ravalli County. (Census 2000)
5. The subdivider has not proposed mitigation for the impacts that an additional 32.5 people will have on Public Safety Services (Sheriff, E-911, and DES) prior to any taxes being collected from those additional residents. (Canyon Breeze Subdivision Application)
6. *The requirements and conditions listed under Fire District, Law Enforcement and County Emergency Services, Ambulance Services, and Roads in Criterion 3 will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

Water and Wastewater

7. The applicants are proposing individual wells and wastewater facilities. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that

they have received adequate information for local subdivision review to occur.
(Canyon Breeze Subdivision Application)

8. *The subdivider is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Requirement 9)*

Natural and Man-Made Hazards

9. *To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)*
10. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
11. *To mitigate impacts on public health & safety, the covenants shall include a statement regarding radon exposure. (Condition 2)*
12. The preliminary plat and soils map indicate that the subdivision may have soils rated as "Very Limited" for road and building construction. (Canyon Breeze Subdivision Application)
13. *To educate property owners and to mitigate potential impacts of this subdivision on Public Health & Safety, a notification of the potential for Very Limited soils shall be included in the notifications document filed with the final plat. A reduced plat showing the approximate locations of soils rated as Very Limited for roads and building construction and descriptions of the soils in question shall be attached to the notifications document as an exhibit. (Condition 1)*
14. The entire property falls outside the 100-year floodplain of the Bitterroot River and is separated from the river by Stevensville River Road. A floodplain analysis was not required. (Canyon Breeze Subdivision Application, Site Visit, GIS data)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

Commissioner Grandstaff opened public comment.

Nathan Lucke gave a review of the property which included road access. Nathan stated they are in agreement with the Staff Report and the 17 conditions of approval. He discussed the residents to the east having water rights to their property. He stated there is a condition of approval for an easement on the plat mainly a ditch for the water supply. He pointed out the proposed easement on Lot 5 that would run up to Lot 4, Lot 11 and Lot 3. Nathan stated there would be an agreement for the easement with the residents for the water supply. He stated the cul-de-sac would be located by the access on Stevensville River Road. He noted it was an agreement with the Fire Department to move the cul-de-sac to ensure a short emergency access.

Chuck Burrier asked how the emergency entrance to the property will be secured and asked if there has been any review of the environmental impact to the river due to 14 drain fields. He asked if there had been an environmental impact study completed for the river. His concern is the water quality and the infrastructure in the valley. He asked about a central water supply system. Chuck also discussed the traffic on the road and the need for dust abatement and speed limits.

Gavin Ricklefs, representative for property owner, stated the primary concern is the diversionary works for the water supply. He discussed the flood irrigation to his client's property. He stated their only major concern is Condition 13 and they request no deviations be made either major or minor.

Nathan replied he believes Gavin's question would be addressed with Condition 13 by adjusting the language.

Kimberlee Carlson stated she is in agreement with Chuck Burrier's statement. There is not much open space left. She stated there needs to be a plan for the road because it is a washboard. You cannot drive on the road because of the condition. You need an overall plan being so close to the city.

Commissioner Grandstaff called for any further comment, hearing none, closed public comment. She then opened Board deliberation.

1. Effects on Agriculture: Commissioner Driscoll asked if this property is an agricultural feature for the residents. Brad Magruder replied it used to be a cattle grazing area. He discussed the irrigation ditches and the water supply. He stated they have plans to open a nursery. Nathan replied when he met with Gavin yesterday, they discussed the ditch and fencing. Owner Robert Kwapy stated without an easement, no one has a right to build on it or put a fence on it. However if this issue needs to be included in the language, he is fine with it. Commissioner Rokosch stated they can make it subject to final plat approval. Alex stated if the adjacent landowners are comfortable with the agreement, then he has no problem with it. Nathan stated the 'jog' between the property lines is about 12 feet. The culvert should be adequate to ensure water supply. Brad stated he does not know the specifications for the road drainage, but knows there is a storm drain underneath his property. His concern is the storm water drainage onto his property. Nathan replied they can design this system to prohibit the storm water from going into the irrigation ditch. Commissioner Rokosch asked about the agricultural use of the property. He stated the Staff Report states it is of no statewide importance. Commissioner Grandstaff read a letter submitted stating the land was not used for agricultural purposes but hay and livestock grazing.

Commissioner Grandstaff asked Nathan if he has met with KellieAnn Morris of the Weed Department for a weed plan. Nathan replied no, he is not familiar with KellieAnn Morris. Commissioner Grandstaff wanted to ensure a weed plan would be adhered to this spring. Commissioner Chilcott stated there is a history of agricultural uses. Nathan stated according to the findings of fact in the Staff Report, there is no prime farmland or

farmland of statewide importance on the property. Alex stated with prime and important agricultural soils, they have the ability to look at and treat it as important, and when the soil drops below a certain importance; it jeopardizes the Board's ability to effectively mitigate. Commissioner Rokosch stated he disagrees with Civil Counsel Alex Beal. His concern is that it was used for agricultural purpose. Commissioner Chilcott stated they have to 'draw the line somewhere' and he agrees with Civil Counsel, because if he wants to change the criteria, then change the regulations. Commissioner Grandstaff stated the Board does have the ability to interpret the criteria.

Alex stated he views this in a different light. Any time a subdivision is done, agricultural land is pretty much taken out of production. The criterion was meant for land that was used for more than just growing hay. Commissioner Chilcott stated they have taken on a new interpretation and they need to consider if it is a viable operation (a business) or a hobby. Commissioner Grandstaff stated she is sure the land was used for business purposes, not a hobby. Commissioner Rokosch stated farmland of local importance is based on soil types and factors that are measurable. He is sure they can find soils below the importance level.

Commissioner Thompson stated they have to look at the criteria as a whole. He believes the State wants the Board to look at land as productive agriculture. Most of the time, they see people growing alfalfa and the land does not look like it has been farmed. He believes this is not important agricultural land.

Commissioner Grandstaff stated pretty soon there will be no land to take out of agricultural production.

Nathan stated they cannot force people to use the land as agricultural. Based on the findings of fact, this land is not of agricultural importance. Commissioner Grandstaff explained the Board will be asking for a donation for the permanent removal of agricultural land. Nathan replied this piece of property is not agricultural property. Robert Kwapy stated the previous owners rented the land out as cattle pasture and eventually stopped due to the commercial and residential increases in the area.

Commissioner Driscoll stated the valley is losing land and they are trying to enhance what is left. Robert responded this is an 'in fill project' as it is surrounded by commercial use. Commissioner Rokosch requested clarification for consideration of mitigation.

Commissioner Grandstaff requested a vote. **Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll voted significant. Commissioner Thompson and Commissioner Chilcott voted non-significant.** Commissioner Grandstaff stated the reason for the agricultural significance is based on the letter submitted by the previous owner stating it was used for cattle grazing and hay production. She stated it is also based on the fact that the valley is losing agricultural land.

Chuck Burrier stated the Board is taking time to debate their own policies and procedures during the process of a subdivision review. He stated the Board is going to great lengths

and dallying around the process when the agenda is a subdivision review. Alex replied the Board has to look at the six criteria and evaluate them. Chuck stated everyone is going to be sitting here for seven days just to review the six criteria items. Alex replied the State law requires the Board can't have a discussion in their own offices. It must be public.

Board discussion followed regarding prime and important agricultural soils of statewide importance versus local importance. Alex gave his legal opinion regarding statewide versus local and it being part of the proposed regulations. Nathan requested a reconsideration of the vote. Robert stated he understands and appreciates what the Board is saying about the loss of agricultural land. This land has lost its value for agricultural use. It has not been used in an agricultural capacity for crops beyond grass. It is loam on top of gravel. The natural development has precluded it for the use of agricultural purposes. He stated he has leased it out in the past for a period of 30 days for pasture. The rancher whom he leased it to removed the cattle because it did not have enough grass to support the grazing.

Commissioner Grandstaff requested another vote.

Commissioner Grandstaff, Commissioner Rokosch voted significant as mitigated in the Staff Report and offered here today. Commissioner Chilcott, Commissioner Thompson and Commissioner Driscoll voted non-significant as mitigated in the Staff Report and offered here today.

2. Effects on Agricultural Water User Facilities: Commissioner Grandstaff asked if the Board has any comments or concerns. Commissioner Rokosch stated he believes the culvert size should be proper for the water right. Tristan stated he did capture the language proposed by Katsu. Brad Magruder stated Katsu has three inches of water available to her. There has been some discussion between himself and Robert Kwapy as to the definition of those three inches. Commissioner Driscoll questioned severing the water rights. Nathan stated under State law, unless the rights are severed, it runs with the property. He explained the process in detail. He stated right now the property is not being used for any agricultural purposes. Commissioner Grandstaff requested a vote. **All Commissioners voted non-significant as mitigated.**

3. Effects on Local Services: Commissioner Rokosch stated there is a letter from Stevensville Rural Fire Department stating they are in agreement with the emergency access. He stated there is a proposed contribution of \$500 per lot. Nathan replied that is correct.

Commissioner Rokosch reviewed the school bus pick up/drop off zone. Nathan replied the school bus travels down Stevensville River Road. He stated they will defer to the school for their requirements and work with them on meeting those needs. Commissioner Driscoll stated she is on the Missoula County Transportation Board and they are looking at shelters and walkways for the children for safe pickups and drop offs. Nathan replied he will mitigate the shelter for the bus stops. He discussed the importance of pedestrian

facilities and how it was discussed with ASHTOW. Nathan requested the condition be specified and a letter be required stating the school needs have been met by the school district.

Commissioner Rokosch stated in earlier subdivision reviews, a walkway for pedestrian and bicycles (children) had been mitigated. Commissioner Driscoll stated it is important to have this mitigated prior to final plat approval. **Commissioner Chilcott stated condition 17 should be amended allowing a letter from the school district indicating all requirements have been satisfied prior to final plat approval. Nathan requested it should also read "extended easements if necessary".**

Commissioner Grandstaff read the figures submitted from the Superintendent of Stevensville Schools. Commissioner Rokosch stated the figures include impact fees which the Board cannot use as a basis for mitigation. Commissioner Grandstaff stated they could use the total per pupil cost (tax levy excluding capital) as a basis equaling \$2,568 per household. Commissioner Rokosch clarified the census figures for pupils per household for the local impact and the terms of mitigation.

Commissioner Grandstaff discussed water and waste water districts. Commissioner Rokosch asked if there had been any consideration of the individual wells and septic systems near proximity of the river. He asked if a level two treatment would be considered. Nathan replied with nitrates, they are passing the regulations which would be level two. They do not see a need for it to go to level two with the aquifer. Commissioner Driscoll stated even though they are rating the nitrates and phosphates; they are looking at oil not being treated by the systems. Nathan replied he has consulted Hydrogeologists regarding the pharmaceuticals. He believes education is the best method. Discussion followed regarding education for pharmaceuticals. Alex stated he is not aware of any problems with pharmaceuticals for this property. He suggested notification.

Commissioner Grandstaff asked for any further discussion, hearing none.

Commissioner Grandstaff clarified public health and safety includes 9-1-1, Sheriff's Department and Office of Emergency Management.

Commissioner Driscoll questioned the walkways for bicycle and pedestrian. Nathan replied he is sensitive to Commissioner Driscoll's concerns but there is not a lot of information to support the need for pedestrian facilities in this area. Commissioner Driscoll stated she disagrees. She stated Nathan's earlier statement indicated this is in a commercial area. Commissioner Rokosch stated the walk way is for transportation consideration.

Commissioner Rokosch questioned the language of the easement. Tristan replied they can include it in Condition 14. Commissioner Rokosch questioned the road maintenance agreement in Condition 15. Tristan replied there is an existing maintenance agreement for the Canyon Breeze Court. He stated the road maintenance requirements are to be

included prior to final plat approval. Tristan further stated all amended conditions are to be done prior to final plat.

Commissioner Rokosch reviewed the county cost of local services. He stated the Board is bound by regulations. Commissioner Grandstaff stated landowners in the past have made contributions to mitigate the impacts on local services. Commissioner Rokosch stated the only hard numbers they have is the break down of the county budget. Commissioner Driscoll stated they only have one part of a three part picture. At this point in time, they have to do a study for the costs. Commissioner Grandstaff stated in the past, they have received (approximately) \$200 per lot. Commissioner Driscoll stated the Board is regulated by the legislature and is now working to have impact fees in place to offset the impacts on growth. Commissioner Chilcott states impact fees are separate from cost of services. Cost of services are, for example, gas for the Sheriff's car. Commissioner Rokosch stated these contributions are mitigation for the effects of this subdivision. Tristan clarified mitigation as proposed as \$500 per lot for Fire Department, \$500 per lot for School District and \$500 per lot for public safety. Commissioner Grandstaff requested a vote. **Commissioner Grandstaff, Commissioner Rokosch and Commissioner Driscoll voted significant. Commissioner Thompson and Commissioner Chilcott voted non-significant as mitigated, basis being: walkways, bus shelters and cost of services based on the number of households.** Renee Lemon requested a copy of the report from Dennis Stranger to use if it is going to be referred to in the subdivision criteria. After Board discussion, Alex stated the Board had two choices, either they can proceed without reference to Dennis Stranger's report or they can end it right now based on new information.

Robert Kwapy stated this is equity. Nathan asked if the owner wants to discuss all mitigation or mitigate each of the six criteria as discussed. Robert replied he would rather have an open discussion of the mitigation as reviewed. Nathan stated in order to represent his client, a lot of the mitigation proposed is not based on fact or solid numbers. There are reports that are half way done. This should be based on the evidence of the subdivision and the existing regulations. Alex stated the Board is disregarding Dennis Stranger's Report.

Commissioner Grandstaff stated the contribution offered for the school district is not anywhere in the range of the cost. Commissioner Rokosch stated the cost is \$1,279 per pupil. Alex asked why it is necessary to request money for the schools. Commissioner Rokosch replied it is a necessity to adequately educate children and to mitigate the cost of doing so.

Nathan discussed the walkways and the costs. He stated in the past the Board has approved ADA slope requirements instead of sidewalks. He discussed the walkways in another subdivision, Mountain Meadows that were the result of mitigation. He thinks it is something he can work with. **Nathan stated they will interact with the school district for the bus turn outs and possible shelter and have the school submit a letter of satisfaction. He stated they are going to stay with \$500 per lot for the Stevensville Fire Department, \$500 per lot for the Stevensville School District and \$500 per lot**

for public health and safety and no contribution for cost of services. Nathan requested with the proposed condition of the walkway, to include a review by the County Road & Bridge Department. Alex states a finding for the pedestrian walkway would make it clear to the public why it would need to be there. Renee stated language should be included for the bus shelter to be constructed before final plat approval. Nathan agreed. He stated he would like to clarify the walkway. He asked Commissioner Driscoll where she would like to see the walkway. **Commissioner Driscoll replied along one side of the road five feet wide.**

Commissioner Grandstaff requested a vote. **Commissioner Grandstaff and Commissioner Rokosch voted significant as mitigated in the Staff Report with amendment to conditions. Commissioner Thompson, Commissioner Chilcott and Commissioner Driscoll voted non-significant as mitigated with amendment to conditions.**

Commissioner Grandstaff recessed the meeting until 1 p.m.

Commissioner Grandstaff reconvened the meeting at 1 p.m.

4. Effects Natural Environment: Commissioner Grandstaff confirmed no woodstoves will be allowed by the covenants. Robert replied that is correct. Commissioner Rokosch asked about the ground water. Robert replied he did some investigating regarding ground water. He has found a grass (Fescue) that will require very little water and would like to mandate the use of it in the covenants. Commissioner Rokosch stated his concern is capturing it accurately in the covenants as well as limiting the grass to one particular ground cover. Robert replied he will write it into the covenants as 'drought tolerant'. Tristan suggested limiting the amount of Kentucky Blue Grass. Commissioner Rokosch replied indicating a drought tolerant grass would be sufficient. Nathan stated the concern is pulling too much water from the aquifer to irrigate the grass. There is plenty of water in the aquifer and Robert is willing to mitigate for a drought tolerant grass.

Commissioner Driscoll stated they could tap into the river water but then there is the concern of lowering the river line. Nathan replied there is so much water underneath, it is not a concern. Commissioner Rokosch questioned the water rights being severed. Robert replied the water rights are from Kootenai Creek. Commissioner Rokosch suggested contacting Fish, Wildlife and Parks (FWP). Robert replied he has consulted FWP. Commissioner Rokosch stated it does have some bearing on what is available such as orchards and gardens. Commissioner Rokosch questioned developing ¼ acre of a footprint for drought tolerant species. Nathan replied it is up to the decision of the Board. He suggests a ¼ acre maximum of irrigated area and drought tolerant ground cover. Commissioner Driscoll expressed her concern about heavier weed infestation. Nathan replied the property is not weed infested as to date. Commissioner Chilcott asked for clarification of the limitation of ¼ acre of irrigated land. Commissioner Grandstaff replied it is due to the sale of the water rights and the landowners depending on ground water for irrigation. Alex stated if the landowner is willing to include it in the covenant, then it is fine on its own.

Commissioner Grandstaff requested discussion on the surface water. Commissioner Driscoll questioned the distance of the property from the river. Nathan replied it is about 100 feet including the flood plain. He discussed storm water drainage. He stated the storm water should run east towards the river, then south along the road side ditches in the culvert and into the river. Commissioner Driscoll questioned the oil from cars being drained into the river. Nathan replied there will be vegetation that will provide filtration for the contaminants before entering into the river. Commissioner Driscoll stated comments can be made to the DEQ regarding the runoff.

Nathan stated they are required to forward the comments from this meeting to the DEQ.

Commissioner Grandstaff requested any further comment on criteria number 4. Commissioner Rokosch stated his concern for weed management. He requested a weed management plan be put into the covenants.

All Commissioners voted non-significant as mitigated here today.

5. Effects on Wildlife and Wildlife Habitat:

All Commissioners voted non-significant as mitigated.

6. Effects on Public Health and Safety: Commissioner Driscoll stated her concern is traffic. She questioned the response time of emergency vehicles to the subdivision. Robert replied it is approximately 5 minutes. Nathan replied the utility lines are being moved. Commissioner Grandstaff stated it is the Hamilton to Woodside portion. Commissioner Driscoll questioned the length of the new four lane section of Highway 93. Commissioner Thompson stated it is in the works with a four year plan through MDOT. Nathan stated the existing situation with an approach permit is valid for 50 years. The approach is going to be from Highway 93. Currently there are three access points that will be adjoined as one. Commissioner Driscoll asked when Canyon Breeze Road is going to go from a two lane to a one lane. Robert replied sometime next year.

Commissioner Thompson questioned the emergency entrance and how they intend to keep it limited to emergency response vehicles only. Nathan replied they will have some fencing and pylons. They are working with the fire chief. The intent is for it to be used as an emergency only access, not for public use.

Commissioner Thompson asked about the level of ground water being high in the lot across Highway 93 from the subdivision. He asked if that is why it cannot be developed. Nathan replied they currently have a client looking to develop that lot. High ground water is an issue on the lot but it is being investigated.

Commissioner Rokosch questioned the pro rata contribution. Nathan replied there will not be a pro rata share based on the emergency access as it is not being utilized by the

public. The design is for one access with the emergency access off of Stevensville River Road. Nathan stated if the county thought to make the connection to Stevensville River Road from Canyon Breeze Road; it will cause people to use the road as a short-cut to Highway 93 from the Wye which will drastically increase traffic. Chuck stated once the approval has gone through, he requests the access be on the new road and not for the heavy trucks. He would like to see this requirement. Robert replied the primary contractors originally used the access. This is perfectly acceptable. Tristan asked Robert for the language. Nathan replied the 'emergency approach shall not be used for public use'.

Leo Staat stated this is very confusing. He stated there are so many issues it would take forever to sit here and discuss them. He asked if he could submit a 'pros and cons' letter for consideration. Commissioner Driscoll replied she would like to hear what Leo has to say. Alex replied technically public comment is closed. Commissioner Chilcott replied there is a process to this much like court law. We are past the point of public comment. Commissioner Driscoll stated she understands Leo's request and would like to hear his knowledge and concerns on the issues. Commissioner Grandstaff stated the Board would like to make a decision today. Commissioner Rokosch asked if Leo received notification being an adjacent landowner. Leo replied yes he did but he did not realize he could not submit a letter after public comment. Leo stated the original property had been subdivided and now there is the 27 acres left. He did not know how much it entailed until he sat through this meeting.

Alex stated the Board does not have any ability to enforce the covenants prior to final plat approval. Commissioner Grandstaff asked for any further discussion for criteria number 6 hearing none. She then requested a vote.

All Commissioners voted non-significant as mitigated here today.

Tristan recapped the mitigation. He stated in Criteria 2, Condition 13 was amended to the culvert regarding the language to meet the water demand and the location of the irrigation easement. Criteria 3, Condition 17 regards the safe pick-up/drop off zone. The developer offered \$500 per lot to Fire District, \$500 per lot to the school district and \$500 per lot to public safety payable upon final plat approval. The developer agrees to provide a walkway of five foot gravel surface on one side of the internal road to meet with the approval of county Road & Bridge Department. Criteria 6 will be amended to include the emergency approach being for emergency use only and not for public use.

It was further derived A 15-foot wide irrigation easement providing water from the west, north along the western boundary of Lot 4 then east along the shared boundaries of Lots 3 and 4 and Lots 11 and 12, to Lot 2 of the East Side Subdivision shall be shown on the final plat.

Commissioner Chilcott made a motion to approve Canyon Breeze Major Subdivision based on findings of fact and conclusions of law in the Planning Staff report and the amended conditions and as mitigated today. Commissioner

Thompson seconded the motion. Commissioner Grandstaff requested any further comment. Commissioner Rokosch stated he cannot approve this subdivision based on the conclusion of the local impacts on agricultural land. **Commissioner Grandstaff, Commissioner Thompson, Commissioner Chilcott and Commissioner Driscoll voted 'aye'. Commissioner Rokosch voted 'nay'. Motion carried.**